Office - Supreme Court, U.S.
FILED
DEC 30 1981
ALEXANDER L. STEVAS

No. 81-1018

IN THE

# Supreme Court of the United States

_____ TERM 1981

OFFICERS WILLIAM J. VORBECK, ROY L. PERKINS, GEORGE RATTERMAN, WALTER OTTEN, GARY PERKINS, JOSEPH BRASSER, and THE ST. LOUIS POLICE ASSOCIATION, a Not for Profit Organization,

*Petitioners,*

vs.

JOHN A. SCHICKER, JR., SUZANNE HART, FREDERICK N. WEATHERS, and JAMES P. CONWAY, as the Board of St. Louis Police Commissioners of the City of St. Louis,

*Respondents.*

## SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

LONDON, GREENBERG & FLEMING
LAWRENCE J. FLEMING
C. JOHN PLEBAN
1600 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
(314) 231-8700
*Attorneys for Petitioner*

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

United States District Court
Eastern District of Missouri
Eastern Division

No. 78-0560-C (C)

Officers William J. Vorbeck, Roy L. Perkins, George Ratterman, Walter Otten, Gary Perkins, Joseph Brasser, and The St. Louis Police Association, a not for profit organization,

Plaintiffs,

v.

John A. Schicker, Jr., Suzanne Hart, Frederick N. Weathers, and James F. Conway, as the Board of St. Louis Police Commissioners of the City of St. Louis,

Defendants.

## MEMORANDUM

This case was tried to the Court. The Court has heard the testimony of all witnesses and received exhibits in evidence. After the conclusion of the evidence plaintiff William J. Vorbeck was dismissed from the suit since he was no longer with the St. Louis Police Department and the defendants listed above were substituted for the previous defendants since they are the current Board of the St. Louis Police Commissioners of the City of St. Louis.

Plaintiffs bring this action for injunctive and declaratory relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 *et seq.* alleging the unconsitutionality of certain provisions of the personnel regulations of the St. Louis Police Department. Plaintiffs allege that the regulations are overbroad and vague and have a chilling affect on plaintiffs' First, Fourth and Fourteenth Amendment guarantees.

The St. Louis Police Officers Association is a not-for-profit organization organized and existing under the laws of the state of Missouri and chartered by the State to promote the welfare of the police officers. The other plaintiffs are individual officers of the Metropolitan St. Louis Police Department and are presently employed by the said Department.

The defendants comprise the present membership of the Board of Police Commissioners of the City of St. Louis, and administrative agency of the State of Missouri, appointed and operating under the statutes of the State of Missouri, V.A.M.S. §§ 84.010 through 84.340.

Since this action was commenced and prior to trial, certain regulations of the Police Department Manual have been revised and there is no longer an objection between the parties concerning some of those sections. The plaintiffs challenge the constitutionality of the following rules and regulations: Sections 7.010(c), (d), (e), (f), (g), (h), (i), (m), (q), (w), (x), and 10.080.

None of the plaintiffs in this action have ever been disciplined under the rules and regulations of the Police Department but their basis for challenging the rules is that they chill their personal lives. A careful examination of these rules shows that to some extent they follow rules which were similarly laid down by members of the military concerning the military's conduct. In fact, the same reasons for military rules apply to a police department.

Sections 7.010(c), (d), and (e), which read as follows:

> 7.010 Standards of Conduct - a member of the Department shall be subject to disciplinary action for the violation of the rules of conduct set forth by the Department as herein, for the violation of other rules and regulations set out in the Manual, for the violation of Special Orders, and for violation of the orders of a superior officer.

> Every member of the Department shall, at all times, maintain reasonable standards of courtesy in their relations with the public and with other members of the Department and shall conduct themselves in such a manner that no discredit will be brought upon the Department in general or themselves in particular.
>
> Acts contrary to good conduct shall include, but not be limited to, the following:
>
> • • •
>
> (c) Any conduct unbecoming to a member of the Department.
>
> (d) Any conduct which is contrary to the good order and discipline of the Department.
>
> (e) Any conduct detrimental to the public peace or welfare.

are essential to maintaining the good name of the Police Department.

In *CSC* v. *Letter Carriers,* 413 U.S. 548 (1973), the Court held that the Hatch Act which contained the following language:

> An employee in an Executive agency or an individual employed by the government of the District of Columbia may not -
>
> (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or
>
> (2) take an active part in political management or in political campaigns.
>
> For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees

> in the competitive service before July 19, 1940, by determination of the Civil Service Commission under the rules prescribed by the President.

is not impermissibly vague nor overbroad and is not invalid.

In *Parker* v. *Levy,* 417 U.S. 733 (1974), the Court held that the Uniform Code of Military Justice which provides that "any person subject to this chapter who - (2) willfully disobeys a lawful command of his superior commissioned officer..." or "any commissioned officer, cadet or midshipman who is convicted of conduct unbecoming an officer and a gentlemen shall be punished" is neither overbroad nor vague.

The St. Louis Metropolitan Police Department is a 1900 member para-military organization charged with police functions within the City of St. Louis which is a large section of a two and one-half million populated metropolitan area. Their functions include riot control, traffic regulation, minor criminal matters,and major metropolitan area drug control. Members of the Police Department are engaged in both uniform activities and highly sensitive undercover operations. It is essential that they be subject to many stringent rules and regulations which would not apply to other government agencies.

The Seventh Circuit has taken a different view in *Bence* v. *Brier,* 501 F.2d 1185 (7th Cir. 1974) in which they held that "conduct unbecoming a member and detrimental to the service" was unconstitutionally vague.

Section 7.010(f) which reads as follows:

> (f) Drinking alcoholic beverages when off duty to an extent which would render him unfit for immediate duty.

is not an unreasonable restraint since an off duty policeman is subject to immediate recall in an emergency and it is not unreasonable to require him to restrain from drinking alcoholic

beverages when off duty to an extent that would render him unfit to return immediately to duty.

Section 7.010(g) reads as follows:

> (g) Borrowing, obtaining, receiving, soliciting or accepting any money, securities, property, or other valuable thing or any credit or guarantee of credit either directly or indirectly, from any tavern keeper or prorieter, any professional bondsman, any gambler, *any person liable to arrest or complaint,* any person in official custody or free on bail or any relatives or employees of such persons.

The phrase "any person liable to arrest or complaint" had been interpreted by the Board to mean "any person under investigation or against whom a complaint has been made or an arrest warrant has been issued." This rule for clarity should be amended by the Board to conform to their interpretation of it. It is essential that policemen do not deal with persons in the circumstances outlined above in this rule that might appear to be a bribe or currying favor with persons that may cause trouble for the officer at some future date.

Section 7.010(h) which reads as follows:

> (h) Failing to maintain good credit relations with creditors.

is not an unreasonable request and the Courts have so interpreted it. *See Jenkins* v. *Macy,* 357 F.2d 62 (8th Cir. 1966).

Section 7.010(i) reads as follows:

> (i) Obtaining, collecting or receiving any money, securities, property or other valuable thing from any person or company in settlement for personal injury or property damage incurred in the course of duty or employment, without first having obtained permission from the Board.

It is essential that the Police Department be informed of any litigation in which their officers are involved and any settlements thereof in order to be certain that they are, in fact, receiving a settlement for damages. A police officer has a great standing in the community. His power to impose punishment is such that the Department needs to be informed of his activities and to be certain that he is not obtaining money in a wrongful manner.

Sections 7.010(m) and (q) which read as follows:

> (m) When not on duty, leaving the city or county of St. Louis for a period exceeding twenty-four hours without having first obtained the permission of his commanding officer or acting commanding officer.
>
> (q) Reporting sick or injured without notifying one's commanding officer or acting commanding officer prior to the appointed time for him to report for duty, or leaving his residence or place of confinement while on the sick list except to obtain medical treatment or attention; or failing to contact a Department or private physician within twenty-four hours after reporting sick.

are necessary to conduct the Department's business for the reason that the Department may be aware of an impending call of all off duty policemen to duty and it needs to know where the policemen are and how they can be reached. Additionally, if the policemen are sick and in a sick or injured status, they are drawing full pay and the Department needs to know what they are doing and whether they are, in fact, ill or malingering for their own benefit. The Department may need an officer who is on sick leave in an emergency to perform a less strenuous duty and may need to reach that officer immediately.

Section 7.010(w) reads as follows:

(w) Failing to devote one's time and attention to the business of the Department or following any other business or calling, without first obtaining written permission from the Chief of Police to engage in secondary employment. The Chief of Police shall promulgate a procedure to operate and control secondary employment.

There are many situations in which a policeman may be able to obtain employment in an off duty status, but the Department needs to know for whom he is working and the nature of the work he is doing and whether or not it is in accordance with sound police practices. The Department members should not engage in disputes involving an employee and an employer and many types of employment should be essentially prohibited to police officers.

Section 7.010(x) reads as follows:

(x) Failing to be prepared at all times to act immediately whether or not during the specific hours allotted to a member of the Force for the performance of his scheduled duty, or failing to detect and prevent crime and failing to preserve the peace and order, when not in uniform and off duty, or when in uniform and on duty.

This regulation is such that an officer off duty should be able to assist in the prevention of crime even though he is off duty. Any time an officer off duty engages in police work he is paid time and one-half and/or double time, depending on the number of hours he is engaged in that activity. It would be inconsistent for an officer not to prevent crime which he observes even though he is off duty.

Section 10.080 reads as follows:

10.080 Weapons to be Carried - Each member of the Department, when on duty, while in the state of Missouri, shall carry a revolver as authorized by the Board and other weapons as the Board may, by order, prescribe.

When off duty, and not in uniform, it shall be left to the individual officer's discretion whether or not he goes armed.

Only Department-issued revolvers, or personally-owned revolvers which have been inspected and approved by the Department armorer, may be carried while on or off duty. All other weapons carried by armed members of the Department must be issued by the Department. Only Department approved ammunition may be used in weapons carried by armed members of the Department.

The carrying of automatic pistols is prohibited. The carrying of personally-owned shotguns, rifles, and similar weapons is prohibited.

The carrying of police pocket batons is authorized as outlined in procedures set down by the Chief of Police.

The purpose of this regulation is to be certain that any weapon carried by a police officer either on or off duty is carefully checked by the ballistics experts to be certain it is in proper working order. The requirement that the ammunition which they use be issued only by the Department is essential because the Police Department ammunition is checked at least annually and in most instances every six months to be certain it is in proper working order.

The use of automatic weapons may be authorized by special order of the Board but otherwise is prohibited for the reason that automatic weapons can be dangerous unless the user is an expert in them. Additionally, the type of ammunition must be such that it will inflict the maximum shocking power against an individual but will not go through an individual and kill other people in the vicinity.

These regulations do not prevent a person from using an automatic weapon on a target range or carrying a rifle while hunting, but merely prevent them from being carried while an officer is on or off duty, without authority from the Board.

Each member of the St. Louis Metropolitan Police Department is guaranteed that he may not be dismissed, reprimanded, or disciplined without being entitled to a hearing at which a record is made, persons testify under oath, and a member of the Board reviews the entire record of the hearing and makes recommendations to the full Board of Commissioners. They have the right to appeal any punishment meted out by the Board to the Circuit Court of the City of St. Louis on up through the State judicial processes for any other type of litigation. Each officer's right is fully protected from any reprimand, dismissal, or loss of pay.

This Court finds nothing overbroad, chilling or unconstitutional in any regulations of the Police Board with the exception of that portion of 7.010(g). The Police Board will be given thirty (30) days and if it desires to amend that rule to conform to their interpretation of it and report back to this Court. The Court will then enter a judgment in accordance with this memorandum.

Dated this 27th day of August, 1980.

/s/ James H. Meredith
United States District Judge

United States District Court
Eastern District of Missouri
Eastern Division

No. 78-0560-C (C)

Officers William J. Vorbeck, Roy L. Perkins, George Ratterman, Walter Otten, Gary Perkins, Joseph Brasser, and The St. Louis Police Association, a not for profit organization,

Plaintiffs,

v.

John A. Schicker, Jr., Suzanne Hart, Frederick N. Weathers, and James F. Conway, as the Board of St. Louis Police Commissioners of the City of St. Louis,

Defendants.

**JUDGMENT**

Since the trial of this cause, Section 7.010(g) of the Police Manual has been amended by the Board of Police Commissioners to read as follows:

> "Borrowing, obtaining, receiving, soliciting or accepting any money, securities, property, or other valuable thing or any credit or guarantee of credit either directly or indirectly, from any person under investigation or against whom a complaint has been made or an arrest warrant has been issued, any person in official custody or free on bail or any relatives or employees of such persons."

The memorandum of this Court dated August 22, 1980 is hereby incorporated in and made a part of this judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants have judgment against the plaintiffs and plaintiffs' cause is dismissed with prejudice at plaintiffs' cost.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rules and regulations of the Board of St. Louis Police Commissioners of the City of St. Louis are not oppressive; they are not unconstitutional; they do not violate the plaintiffs' right to privacy; they do not have a chilling effect on plaintiffs' right to freedom of speech and association; they do not violate due process; they are valid and proper regulations in so far as the conduct of police officers is concerned.

DATED this 15th day of October, 1980.

/s/ James H. Meredith
United States District Judge